

## DRAFT Assessment—for Citizen Trade Policy Commission review



### The Maine Citizen Trade Policy Commission: A Model for State Oversight and Communication on International Trade and Investment Issues

*Assessment submitted to the Maine Legislative Council 29 November 2006*

**Executive Summary.** The activities of the Maine Citizen Trade Policy Commission were evaluated with respect to five different objectives: communication between different branches of government and civil society groups in Maine; communication with national associations and with other states; communication with the Office of the United States Trade Representative (USTR) and with the members of Maine's congressional delegation; engaging Maine's citizenry on international trade and investment issues; and communicating with the media. Our assessment suggests that in the last two years the Commission has achieved many of the purposes for which it was established, and has come to be seen nationally as a successful model for state oversight and engagement on trade issues. We conclude that the following were of particular important to the effectiveness of the Commission:

- 1) ***High levels of inter-branch communication***, and consequently the perception that Maine's state government is speaking with one voice on trade. The Office of the United States Trade Representative (USTR) has been responsive to Maine's request for consultation, while Maine's leadership in engaging USTR has laid bare some of the shortcomings in current federal-state consultation on trade policy. Initially, there were concerns that the Maine CTPC would 'fragment' communications between USTR and the state of Maine; we find that the opposite has occurred, which is also a testament to the constructive role that the Maine International Trade Center has played as part of the Commission in the last year.
- 2) ***Clear communications with Maine's Congressional delegation*** on most of the major trade agreements brought before Congress in the last two years. Congressional staff in Washington report that they are very aware of the Commission, and that communications from the Commission have strongly influenced the votes for/against particular trade agreements by members, and their understanding of the issues generally.
- 3) ***Public hearings around the state***. The statute creating the Commission called for it to "provide a mechanism for citizens and Legislators to voice their concerns and recommendations." The Commission has played an outstanding role in providing a direct link between Maine citizens and federal representatives in Washington DC. No one who has attended these public hearings or listened to transcripts can fail to be moved by the deep level of interest and concern that Maine's citizens have regarding trade and globalization issues. They are a testament to the continued strength of democratic traditions in Maine, and also demonstrate that Maine citizens' have an international perspective on the impact of trade and investment agreements, with concerns that transcend state and national boundaries.

No other state oversight committee/commission has taken its “show on the road”; we feel that this has been Maine’s most significant contribution to the national debate on trade, and a role/approach that we hope will be emulated by other states. Already legislators in New Hampshire have asked for information about Maine’s approach to Public Hearings—and given this state’s important role in the 2008 Presidential primary season, this would seem an excellent way to engage candidates, the media, and citizens on trade issues.

Two areas of engagement by the Commission had more mixed success. Print media in Maine generally did report on the Commission’s public hearings; but the Commission itself does not yet have a significant presence in the media. Second, the Commission does not have a strong constituency within the business community, although particular concerns and grievances from several small business owners were aired at public hearings. Given the reach and professionalism of the Maine International Trade Center, which clearly is providing valued services to Maine’s exporters, it may not be part of the Commission’s mandate to develop such links. But perhaps the composition/membership of the Commission needs to be revisited, so as to give key Maine industries a “seat at the table.” Among those suggested were the information technology sector and the wood products industry; and a representative from the Maine Department of Economic and Community Development.

As the national conversation around trade shifts from “playing defense” to articulating a positive vision for trade—“what does a Fair Trade Agreement look like?”—Maine’s business community should have a stronger voice in the Commission’s communications with USTR, with the Maine Congressional delegation, and in conversations around the state regarding the future of trade.

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A final thanks to the Commission co-chairs. It has been a great pleasure working with Senator Rotundo and Representative Patrick, who have given the Commission tremendous guidance since its inception, and have been critical to making the Maine CTPC a national leader on democracy and trade.

## **Assessing Roles/Activities of the Maine CTPC**

The statute creating the Maine Citizens Trade Policy Commission noted three purposes for the Commission: *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine’s jobs, business environment and laws from any negative impact of trade agreements.”*

To fulfill that first purpose, *“assess and monitor,”* the Commission took three actions. The first was to ensure that meetings of the Commission featured speakers from various backgrounds and perspectives—including members of the Commission with expertise on particular topics. In addition to reporting on key legal and economic issues, speakers at the Commission usually reported on opportunities for connecting to other states, through national associations, or with other constituencies. Note that because the Commission does not have dedicated staff analysts, for now the Commission has been fairly reliant on outside policy support. Second was the formation of three subcommittees to look at specific issue areas; policy recommendations from each of those subcommittees are considered in a subsequent section here. Third, the Commission prepared letters to the members of Maine’s Congressional delegation, or the Office of the United States Trade Representative, which sought to clarify particular legal and economic matters pertaining to the implementation of existing or proposed agreements.

To fulfill the second purpose, *“provide a mechanism for citizens and Legislators to voice their concerns,”* this was accomplished through the Public Hearings (see text box below) and through letter-writing. Congressional staff in Washington reported that they frequently heard about issues raised at the public hearings, and in one case had read through the transcripts of the public hearings, stating that this was an excellent way to stay in touch with constituent concerns. One Commission member summed up the impact of the hearings very well: “we helped to educate a diverse group of people while building a shared analysis of the problems.”

The Commission is now getting to a point where it can *“make policy recommendations”* regarding trade—the third purpose cited in legislation establishing the Commission. Over the past two years, USTR has been negotiating a number of regional and bilateral trade agreements, in addition to the on-going talks at the WTO in Geneva on the Doha Development Agenda. Consequently, the Commission has primarily been in the position of making recommendations to its Maine’s Congressional delegation as to votes on particular trade agreements. The Commission communicated quite forcefully to its Congressional delegation on the subject of the Central American Free Trade Agreement (CAFTA), and judging from the votes taken by Maine’s delegation, that message came through loud and clear. One Congressional staffer noted that they did not hear from the Commission about some of the less well-known agreements (eg., US-Oman, “normal trading relations” status for Vietnam); she suggested it would be useful for federal representatives to know if the Commission had looked at those agreements, whether it had a position, and why. However, given the meeting schedule of the Commission, and

the unpredictability of votes on particular agreements moving to Congress' calendar, this may not be realistic.

It might be that the Commission should only comment on those agreements and policy choices that it has had a chance to study in depth, or about those issues that were addressed by Mainers at the Public Hearings. Certainly there was no shortage of discussion about CAFTA, which, given the seemingly negative experience of NAFTA, appeared to strike a particular emotional chord with a number of speakers. It may also be that the Commission should consider adopting a basic policy stating that it would support trade agreements that include certain elements—binding labor and environmental standards, a “no preemption” mechanism, indemnification of states, etc. The present time is an important political moment for developing this “positive agenda.”

The CTPC was very active on another policy recommendation, concerning whether the Governor should commit Maine to the procurement chapters of various free trade agreements. It is in this policy realm where the influence of the Commission can be seen most clearly. In April of this year, the Governor articulated what might be thought of as a “state of the art” policy regarding procurement chapters and state notification:

- I cannot commit the state at this time *“because there is no way of predicting today how procurement needs and priorities will change in the future.”*
- I am concerned about any approach that would appear to pit states against each other, which is *“incongruous with the USTR’s mission to...encourage economic development for the nation as a whole.”*
- *“State legislature and stakeholders, not just governors, must be kept informed and given the opportunity to participate in the negotiating process.”*

The question of state sign-offs on procurement has, in other states, pitted legislatures against Governors, but in Maine, the Commission brokered an inclusive conversation that focused on policy outcomes (is it good for the state?) rather than political means (who gets to decide?). This example of inter-branch cooperation is a large part of the reason that Maine’s concerns on trade are taken seriously in Washington. It is also the case that other states, grappling with the questions of political representation on trade, have looked to Maine’s experience for a positive solution to this problem.

## **Communication with national associations and with other states**

In designing the roles, membership, and function of the Commission, public officials in Maine drew upon the state’s own democratic traditions, the resources of a well-organized Fair Trade Campaign, and the concerns of organized labor, which had previously felt a bit stymied in getting its perspective aired. We have no evidence that Maine planned to set itself up as a “model” for other states; but indeed that’s what has happened.

In the coming year, Maine CTPC members—and staff assigned to the commission—will likely receive an increasing number of requests from other states for assistance and testimony, as more and more states review plans and develop mechanisms for trade oversight. While providing such assistance has implications in terms of the Commission’s time allocation, this should be viewed as a strategic opportunity for Maine

to increase its leverage, to find states with which it shares common positions, and to advance the multi-state networking that is most likely a precondition for any significant improvements in federal-state consultation on trade. In particular, Maine is well positioned to work with the Vermont International Trade Commission (established by statute last year), and with oversight committees in Massachusetts. It is likely that legislation to establish a trade oversight mechanism in New Hampshire will also be brought forward in early 2007. Two areas of strong common interest: health insurance and prescription drug purchasing in relation to the General Agreement on Trade in Services (GATS); and implementation of the Regional Greenhouse Gas Initiative (RGGI). The New England region also has strong common interests in the next Farm Bill reauthorization, described in the report to the Natural Resources Subcommittee.

Maine public officials have had prominent speaking roles in recent national association meetings, as exemplified recently by Linda Pistner's presentation at the National Association of Attorneys General (NAAG) Chief Deputies' meeting in May, and John Patrick's speaking role at the National Conference of State Legislatures (NCSL)'s Annual Meeting this summer in Nashville. There are several other regional and national organizations where Maine could play a leadership role on trade issues, including:

- National Governors Association—after several years in which NGA was not particularly active on this front, there is increased staff and governor interest to see trade issues addressed by the association.
- New England Governors Conference – particularly on energy issues, and addressing cross-border issues with Canada.
- Northeast Midwest Institute—this Washington DC based organization is advancing a reform agenda for the 2007 Farm Bill through its Farm and Food Policy Project. The institute has strong links to members of Congress.
- Eastern Trade Council—a program of the Council of State Governments Eastern Regional Conference, Commission member Wade Merritt sits on the Council's Board of Directors.

Finally it is worth noting that former Maine Attorney General James E. Tierney now directs the *National State Attorneys General Program* at Columbia Law School in New York, and represents another avenue for networking amongst state attorneys general and their staffs.

The current InterGovernmental Policy Advisory Committee (IGPAC) roster does not include a representative from Maine. We understand that there was an attempt to get a representative from Maine on IGPAC—perhaps the appointment has been made, and the public roster has not been updated; or perhaps the person is still being “vetted” for security clearance. Whatever the case, gaining representation on IGPAC should remain a high priority for the Commission. IGPAC is not only the designated policy advisory committee providing state/local government input to USTR's negotiating agenda; it has also taken the lead in a multi-state Services Working Group, asking detailed questions about GATS and playing an important policy role with respect to issues such as new GATS sectoral offers and the “domestic regulation” negotiations.

The Commission is also fortunate in having access to Maine's "State Point of Contact" (SPOC), housed at the Maine International Trade Center. MITC has been very forthcoming in sharing information that has come through the SPOC system with the Commission. From our perspective, USTR's utilization of the SPOC system has been inconsistent. For example, when USTR sent a notice of the new GATS request/offer process to SPOCs earlier this year, it included only a summary of new US offer, and omitted some of the key sectors under discussion, such as bulk storage of fuels, pipeline transportation of fuels, and brokering of electricity. It is unfair of USTR to ask SPOCs to be effective intermediaries if they are not given key information that is of interest to a broad range of stakeholders in the state. While we have no specific recommendation on how to remedy this problem, we would note that it's been a source of frustration for "State Points of Contact," as well. It seems counterproductive for USTR to be providing some information to IGPAC, some to SPOCs, and some directly to states when asked by oversight committees and commissions. This piecemeal approach is inadequate, causes needless suspicion of USTR motives, and again makes clear the need for major changes in the way USTR communicates with states.

### **Communication with the Office of the United States Trade Representative (USTR) and with members of Maine's Congressional delegation**

The Maine Citizen Trade Policy Commission sent a number of excellent letters to its Congressional delegation, and directly to USTR, in the past year. Governor Baldacci also communicated directly with USTR on several occasions—presumably after consultation with the Commission on its concerns. The letters can be grouped into three areas: procurement; new agreements (CAFTA); and on-going WTO negotiations, particularly on services.

Congressional staff members were invited to speak directly before the Maine CTPC. Ideally this could be made an annual event, since Congressional staff spoke very positively about that experience, and found the interactions to be very fruitful. Alternatively, or in addition, the Commission may wish to seek support for sending a delegation/subcommittee from the Commission to Washington DC on an annual basis to meet with House members and Senators. This should be a high priority in the next six months, since Maine's Congressional delegation is likely to play a very important role in the "Trade Promotion Authority" reauthorization debate.

USTR is to be commended for sending not just its public relations staff, but also a GATS negotiator (Chris Melly) to Maine to answer questions at a Commission meeting. The exchange with Mr. Melly was particularly useful, since the Maine CTPC was the first domestic group to learn that USTR plans to drop "necessity tests" language from its services negotiating text with Malaysia and Korea—and one could speculate that this was also due to the questions raised by Maine and other states regarding the language on "necessity tests" in the WTO-GATS Working Party on Domestic Regulation.

USTR staff should also be commended for indicating a willingness to speak with Commission members by telephone. However, some Commission members expressed frustration with the fact that USTR has *not* made any adjustments to its GATS offer as a

result of communications from Maine or other states—“the door is always open, but the answer is always no,” is how one member characterized the interchange.

With this in mind, it is worth noting that USTR did provide a detailed response to Senator Susan Collins in her letter regarding the text of CAFTA. Senator Collins “forwarded” the questions that the Maine CTPC had raised. The Maine CTPC may wish to ask itself, and Congressional staff, whether the most politically effective way to raise questions is via a Member of Congress. If the concern raised in Governor Baldacci’s letter of 7 August 2006 had come from Senator Collins or Senator Snowe—*“To date, states have received no reasonable assurance that GATS will in fact have no impact on state sovereignty”*—one assumes that USTR would endeavor to provide a comprehensive answer. In sum, anything that can be done to regularize the contacts between the Maine CTPC, Hill staffers, and the Maine Congressional delegation is a high priority and a positive step forward.

## **The Public Hearings**

Several Commission members told us that they were overwhelmed by the turnout and response to the Public Hearings. Attending a hearing or hearing/reading a transcript of these meetings should lay to rest any thought that trade and globalization issues are somehow outside the concern of ordinary American citizens. Indeed, the major impression one is left with is how articulate are the speakers who volunteered to come before the Commission to address issues of specific concern—whether it be a local issue, something that touches specifically on their business, something having to do with Maine’s democratic practice, or whether the speaker is acting “in solidarity” with people in the Global South who are negatively impacted by trade and investment agreements. This last point bears repeating: Maine’s citizens repeatedly expressed interest in the effect of trade agreements on other countries, which is a far cry from the “protectionist sentiment” that supporters of the current global trading system use to call out its critics.

At the same time, it has to be acknowledged that the public hearings were oftentimes “grievance sessions.” And in many cases those frustrations were expressed in the form of powerful stories about plant closings, worker dislocations, and the continued hard times experienced by workers in Maine’s manufacturing-dependent communities. But rather than dismiss these tales as one-off stories from aggrieved workers, not representative of larger trends, one has only to look at Maine Department of Labor statistics to realize that those who spoke at the CTPC public hearings were articulating a broader concern and a pervasive reality. Looking at the statistics on “Industries Projected to Gain or Lose Jobs at the Fastest Rate in Maine between 2004 and 2014,” one sees that the industries expected to lose jobs are all manufacturing. Leather, down 44% in the number of jobs over the next ten years. Textile mills jobs—down 40%. Paper manufacturing—down 18%. Apparel may lose another quarter of its total jobs. Plastics, wood product manufacturing, electrical equipment—all double-digit losses. Almost 8,000 jobs expected to be lost—and this is using 2004 as the baseline.

The challenge for the Commission is to acknowledge, and try to come to terms with, two distinct trends: that Maine as a state is now a “top ten” export performer, led by seafood

and information technology and financial services and some specialty manufacturing, led almost entirely by small firms finding smart niches in the global economy; and on the other hand, with the rise of “global sourcing” and the ability of corporations to chase lower wages and worker standards around the globe, that industries which for decades had provided not only good jobs but also an *identity* to many of Maine’s towns and rural areas, are now vanishing.

One can imagine that this bleak testimony to the Commission was hard to respond to, because to any observer of Maine’s economy, it’s a well-known story; and because the trends are not going to be changed or reversed by simple remedies in one or another trade agreement. Among the most powerful pieces of testimony were from workers who had visited communities in Mexico and Central America, to where “their” jobs had been relocated. There was no anger at the people who now held those jobs—just a sorrow and a dismay that the conditions in which they were asked to work, and the wages that they were paid, were so miserable. That Maine workers lost good jobs, but that didn’t result in someone else getting a job that allowed them to raise a family and send their kids to school—this was a powerful experience for many of those who testified in front of the Commission. They understood that industries were mobile and that the unemployment which a generation ago would have been seen as just cyclical, the community just needed to hold on and soon enough, folks would be called back to the mill—those days are over, this unemployment represents a structural shift in the global economy and is permanent. Still, almost none of those who testified in front of the Commission were arguing for straight-up “protectionism” (although one speaker proposed a powerful remedy: “The United States should not be allowed to run a trade deficit with any country”). Instead, speakers asked about how they could manage, how to level the playing field; they asked about labor standards, and trade adjustment assistance programs, and fairness. “This state has some of the best craftspeople in the world. We just need a fair shake.”

But interviews conducted in the state also revealed a much more virulent anger at what is happening in rural Maine. This anger wasn’t directed at the Chinese paper mill worker or Honduran seamstress—more often, it was directed at those with the money to buy a vacation home in the “Maine Woods,” whose cosmopolitan veneer and easy connection to the global economy hid a contempt for those who hadn’t adapted to this new reality: “they just don’t want us there, and so they don’t give a damn what happens to our jobs.” As several people noted, it’s hard to talk about “job retraining” and “building an entrepreneurial culture” when what displaced workers perceived is not just job loss, but a conscious assault on their way of life. This is a much harder nut to crack. Commission members may feel that it isn’t enough to assure those displaced that they will work with the Congressional delegation to reform Trade Adjustment Assistance (TAA) programs, and to fight for binding labor standards as part of any new trade agreements. But if the Maine CTPC were to set its work-plan based on the types of testimony heard at the public hearings, it becomes very clear that working on labor standards and TAA programs *must* be a top priority.

But also important in this equation is to acknowledge where Maine has benefited from integration with the global economy. Again, perhaps because this story is more



frequently told in other fora, those voices of small-business success were less in evidence at the Public Hearings. One story that does need to be told, and can be told better, is the extent to which the Maine International Trade Center is a champion of small-business interests, and how successful it has been in reaching out to the small business community and ‘retailing’ its services to the different needs of people in Portland and Bangor. Another part of that story is its role in attracting investment into Maine. The labor subcommittee’s proposal to work with MITC’s Board of Trustees on cross-border issues with Canada is also an important step in extending collaboration. In sum, the Commission needs to make sure that both halves of this powerful story about the global economy are being heard—and acted upon by its Congressional delegation in Washington.

### **Communicating with the media.**

The Maine CTPC does not have a specific mandate to work with the media, although one could argue that such a mandate does derive from the second of three purposes of the Commission as noted in statute: *provide a mechanism for citizens and Legislators to voice their concerns and recommendations*. The media is able to amplify and frame the Commission’s concerns. It is also clear that the CPTC wanted to become more comfortable in its role before it aggressively sought out connections in print and broadcast media. However, that point has been reached, and basically all of the suggestions that came out of the Commission’s 20 July 2006 meeting, at which members conducted a “brain-storm” about outreach, are good ones: a brochure, newsletter/articles to trade journals and newspapers, “one on one contacts” with business and opinion leaders, and the crafting of public service announcements.

It should be acknowledged that the Commission has accomplished remarkable things with a very limited budget. If it wants to expand its outreach to the media, it would benefit from a conscious strategy and consistent approach—and ideally, that would come from engaging a communications specialist. Clearly this would be one of several competing priorities if the Commission had a slightly larger budget. Based on areas of likely growth/demand, the Commission might seek to balance its “in-state,” “multi-state” and national priorities:

- a) support for developing a communication strategy, and support for Commission members to convene or attend meetings with editorial boards, etc.
- b) support for travel to neighboring states (VT, NH, Mass) in order to develop a strong multi-state platform for engagement on critical issues: GATS, health care, Farm Bill/forestry, “green/sweatfree” procurement, etc.
- c) support for Commission members to spend time in Washington DC, particularly in the first half of 2007, as key issues of trade promotion authority and trade adjustment assistance, etc., will come before the Congress.

Of course how the Commission allocates resources depends first and foremost on how it defines its workplan and political objectives for 2007. In the pages that follow, we lay out a menu of the possible work items, based on upcoming events, the restart of negotiations, and also based on communications of interest from Commission members and those taking part in the Public Hearings.

## **Summary of options for future engagement on trade – ‘Fast Track.’**

Over the past several years, WTO negotiators in Geneva have treated the expiration of the US President’s “Fast-Track”/ Trade Promotion Authority (TPA) as the ‘drop-dead date’ for conclusion of the Doha Round of trade negotiations. TPA expires at the end of June, 2007. For practical purposes having to do with the 90-day period in which Congress reviews agreements submitted to it for ratification, the actual ‘drop-dead’ date for completion of the Doha Development Round is April 1<sup>st</sup>, 2007. Similarly, other bilateral agreements now being negotiated—with Korea, with Malaysia, with Panama—would need to be completed by April if order to be considered under Fast-Track rules.

Prior to the November 7 election, certain voices on Capitol Hill suggested that the President might seek a “Doha-Round-only” extension of TPA negotiating authority. Now, with a change in majority control of both houses of Congress, and continued pessimism in Geneva about the completion of a Doha text, this option appears to be off the table. The more important dynamic now at work was articulated by Senator Max Baucus, incoming chair of the Senate Finance Committee, which has committee jurisdiction over trade agreements in the Senate: “As a practical matter, whatever law reauthorizes fast-track authority...will have to strengthen labor and environmental provisions in some way to win broader Democratic support.”

Note that Senator Baucus is not saying that fast-track renewal for President Bush is a non-starter; quite the contrary. While it is not necessary for the President to have fast-track authority in order to negotiate trade agreements—President Clinton’s authority from Congress expired following the special session at which the WTO “Uruguay Round” agreements were approved, and this authority was denied him in 1998 on basically a party-line vote—the record shows that most free trade agreements are concluded and ratified when the president has this authority. In addition, there is a perception amongst international negotiators that USTR’s behavior changes when U.S. negotiators know that the results of their bargaining are not subject to later amendment by Congress. President Bush renamed Fast-Track as “Trade Promotion Authority” and received that authority from Congress in August 2002.

In terms of the political dynamic now unfolding, early indications are that the House and Senate will propose a new approach to “Fast Track”—defining what would constitute a Fair Trade Agreement and putting the President in the position of approving, or vetoing, legislation that gave him TPA, but which came with a new set of conditions that the Office of the United States Trade Representative would have to observe. Consequently, the next few months are likely to be a period of intense discussion and creativity about the content of a “fast track” renewal—one in which the Maine Congressional delegation will be intensely involved, and consequently a critical opportunity for the Maine CTPC to advance some of its own reform proposals. Among the elements that are likely to be discussed:

- ***Binding labor standards.*** As Commission members heard over and over in the public hearings, this is a key concern of Maine’s citizens. There are different ideas about what would constitute a fair labor standard, but certainly rights of collective bargaining, strict rules on child labor, and stringent enforcement

mechanisms would be part of the discussion. These provisions alone would be sufficient to put significant pressure on China, a country with which the United States has a large trade deficit at present. The United States could use International Labor Organization (ILO) Conventions as the basis for establishing what constitutes a “fair labor standard;” but, as Bjorn Claeson has pointed out, the United States has itself not ratified all of the ILO’s core labor standards. Consequently, there is much work to be done in this area. Maine’s leadership in the “sweatfree” procurement campaigns, the strong support for inclusion of labor standards among Maine’s citizens, and Representative Mike Michaud’s dedication to this issue suggest that engaging on this question is a “high-leverage” opportunity for the Maine CTPC.

- ***Environmental protections.*** Again, there are a number of ways that the concern for environmental protections could condition USTR’s negotiating approaches. One would be to state that trade rules “defer to” multilateral environmental agreements—such as CITES (endangered species), or the Montreal Protocol on Ozone Depletion. The United States has not signed two of the international agreements that are most often mentioned in the trade context, namely the Convention on Biological Diversity (which has significant ramifications for trade related to intellectual property) and the Kyoto Protocol on global warming. The intent of strengthening environmental protections in trade agreements is usually seen as preventing countries from undercutting American manufacturing by “externalizing” their environmental costs of production. Here too a great deal of creative thought will need to go into defining what are the environmental protections that must be observed in a trade agreement, and how such a mandate can be enforced in the international sphere.
- ***Reform of the federal inter-agency process.*** Many have remarked on the “inefficiency”, or even the perversity, of a Fast-Track process whereby the key decision about a trade agreement—whether it will be ratified or not—comes after considerable ‘sunk costs’ of negotiation and the expenditure of ‘diplomatic capital’ just to bring the agreement forward for Congressional consideration. Others have suggested that Fast Track was a suitable mechanism when trade dealt only with at-the-border tariffs, when Fast Track could be used to prevent members of Congress from slipping in changes to the text which favored one or another domestic industry—but that Fast Track in its present guise has long outlived its usefulness. Again, a variety of creative approaches to completely overhauling Fast Track are now being discussed in Washington DC, and increasingly, around the country. Should trade provisions that touch upon national security—for example, critical infrastructure and port security—be reviewed up-front by the Senate Committee on Homeland Security and Government Affairs? Is it more efficient for Congressional committees with jurisdiction over particular economic matters to provide more specific instructions to USTR about the content of those negotiations, so that USTR would know in advance what would or would not be acceptable to Congress? Also, how should the voices of other federal agencies—Commerce, Justice, Labor, the Environmental Protection Agency—be accounted for in the formulation of national trade policy? All of these questions are now being considered.

- ***Reform of federal-state consultation.*** This issue should be one of major concern for the Maine CTPC. The Commission is as well-placed as any entity in the country to make recommendations about how USTR could better communicate with states, enshrine principals of federalism in their negotiating positions, etc. A quick listing of potential items for consideration:
  - Seriously implementing the “no greater rights” provision of international investment agreements, which would curtail the use of “investor-state” provisions in (for example) NAFTA Chapter 11.
  - Indemnify states against possible damage awards in investment cases brought against state laws. (USTR/State had refused to indemnify California in the *Methanex* case.)
  - No preemption of state law based on an international trade commitment; also no withholding of federal funds or permissions to compel compliance.
  - Review of existing procurement commitments for purposes of advancing “sweatfree” and sustainable development objectives.
  - Subfederal measures protected in GATS domestic regulation disciplines.
  - Establishment of a federal-state commission on trade policy.

Note that not all of these measures constitute directions/guidance given to USTR; the TPA bill can be used to articulate broader principles of trade policy pertaining to U.S. federalism and consultation, as well.

In sum, the debate over “fast track” renewal is multi-faceted; there are many possible avenues for Maine CTPC engagement; and the Maine Congressional delegation is likely to be closely identified with some of the more creative, bipartisan reform proposals. This is probably the most important opportunity for advancing policy change that the Maine CTPC will see in 2007.

### **Summary of options for future engagement on trade – ‘WTO GATS.’**

As this Assessment “goes to press,” we have learned that WTO negotiations are restarting in Geneva. There is no sign that there has been any breakthrough in the negotiating arena that led to last summer’s collapse of the Doha Round—that is, in agricultural tariffs and subsidies. Nonetheless, US negotiators like Chris Melly have already been quoted as saying that the negotiations on services should forge ahead. Those negotiations will pertain both to sector offerings and Domestic Regulation. Remember that because the mandate for negotiations on Domestic Regulation come out of the Uruguay Round, it is conceivable that disciplines adopted in that negotiating setting could become binding without progress being made in other areas. USTR has been cagey in answering questions about their authority to adopt such disciplines in the absence of an overall Doha agreement, stating only that it would “be crazy not to go back to Congress” to gain such approval/recognition for new disciplines.

There is much speculation regarding the interplay between the United States’ requests of other countries to make new sectoral commitments, and USTR’s negotiating position in the Working Party on Domestic Regulation (WPDR) talks. Other countries have reported receiving a strong push from the U.S. to make ‘unbound’ (that is, full and unconditional) commitments on “distribution services”—with implications for alcohol and tobacco

trade, and potentially for the ‘rights’ of large retailers, as well. If the U.S. persuaded a sufficient number of trading partners to make full commitments under “distribution services – retail,” would it possibly then make accommodations in the WPDR talks with respect to necessity tests? Again, this is just speculation, and it may be too early to tell; but it is a situation that bears watching.

The Governor of Maine has already indicated his position with respect to new GATS sectoral offers, and the Maine CTPC has registered its concerns about the domestic regulation negotiations. Chris Melly stated that USTR did not find Maine’s reasons for wanting to be carved out of new GATS offers as very compelling. It is not clear why this was so, but two thoughts come to mind. Mr. Melly did not address concerns in Maine regarding health insurance and other health-care related commitments in relation to GATS, choosing to focus on two areas where he thought it unlikely that a U.S. trading partner would mount a GATS challenge (outdoor billboards and the ban on new landfills). But it is false reasoning to suggest that the only risk involved is that a foreign trading partners would challenge these bans (although frankly we do not share Mr. Melly’s conviction that such a challenge is unlikely, particularly if it is directed at a state that appears to be in the vanguard of social change with respect to, for example, health care). Given that one interpretation of WTO rules is that the United States *must* take steps to bring non-conforming measures into compliance with U.S. trade commitments, and given that the federal government has yet to articulate a clear position against preemption of state laws pertaining to international trade commitments, there are a number of scenarios in which the federal government, and U.S. trading partners, can register their “displeasure” with a law passed by Maine or an ordinance adopted by one of its towns, and bring pressure to bear to have the offending measure removed.

The other possible explanation why USTR choose to ignore Maine’s request for a GATS carve-out is that it only came from one state, and it didn’t come through Maine’s Congressional delegation. Again, this is speculation, but it suggests two strategic actions. In fact, Governors from four different states requested some sort of carve-out or safeguard with respect to new GATS commitments. We are not aware that these states have communicated with each other. The other three states do not have oversight mechanisms like the Maine CTPC. This may suggest that the Maine CTPC, in consultation with the Governor, may want to approach these other states (Iowa, Michigan, and Oregon) and see if a unified articulation of concern from four states is more “compelling” than just letters from individual Governors. The other approach, akin to the process used by the Maine CTPC in asking hard questions about CAFTA, would be to engage Maine’s Senators, and have them ask pointed questions of USTR about the rights of states to seek a modification of the GATS schedule so as to adhere to the wishes of that state. Certainly Maine is in the position of being able to point to considerable open and public discussion of its concerns, in public hearings and in legislative settings, to indicate that the position articulated by the Governor had been arrived at through an inclusive democratic process.

In sum, it is our hope that the Maine CTPC will continue to build on its very important 2006 actions with respect to GATS negotiations. The restart of talks in Geneva suggest

that services issues will be very much in play in the months to come—and that in particular the Domestic Regulation talks may not rely upon a reauthorization of Fast Track and ratification by Congress in order to become new binding disciplines, with enormous implications for state and local governing authority.

There are other areas of engagement which bear mentioning.

- **New Agreements: US-Colombia, US-Panama, US-Korea, US-Malaysia FTAs.** By signing the US-Colombia FTA last week, the Bush administration has made it clear that it intends to vigorously pursue new agreements even while there is uncertainty as to the status of ratification of these agreements under Fast Track rules. Apparently ratification of the US-Peru agreement was pulled off the legislative calendar for the “lame duck” session, and so that agreement now joins the Colombia text waiting in the queue for Congressional action—action which is unlikely to occur before the broader Fast Track debate takes place. Nevertheless, negotiations on bilateral fronts continue. Of greatest concern in the **US-Colombia Agreement** is the lack of stronger labor protections. Several speakers at public hearings in Maine spoke about the dangers of trade union activity in Colombia, and this is an issue of particular concern to some Commission members. Some states have registered disbelief that the United States continues to negotiate a Free Trade Agreement with **Panama** after that country refused to sign the standard “tax disclosure/exchange of information” treaty the would allow the United States to track offshoring of profits and other forms of tax evasion. Panama is also a global “bottom feeder” in the area of corporate registration—companies that set up in Panama have to disclose very limited information about their investors, their structure, etc., and extending “investor-state” privileges to companies domiciled in Panama has struck many observers as extremely unwise. Health care issues have been contentious in the recent **US-Korea FTA** negotiations; Korea’s use of a “preferred drug list” has been vigorously challenged by US negotiators—even though that positive list approach is something that many U.S. states, including Maine, are now experimenting with. Finally, Malaysia has long sought to enhance the economic standing of its majority-Malay *bumiputra* population by providing Malay businesses with advantages in government procurement; the United States has viewed such preferences as impediments to the conclusion of an **FTA with Malaysia**.

These are a few of the FTA other issues that the Maine CTPC may wish to track—possibly as study items by the relevant subcommittees (eg., health care in the Korea agreement, labor standards in the Peru/Colombia agreements, procurement in the US-Malaysia agreement, etc.).

While many of the recommendations made in the Subcommittee reports can be folded into the two proposed areas of major concern/engagement for the CTPC for next year—namely “fast track” and GATS negotiations—ideas from each bear summarizing here.

For the **Natural Resources Subcommittee**, we recommended that the Maine CTPC think seriously about what leverage it has, and what leverage the state of Maine will have, in the upcoming debate on renewal of the Farm Bill. Although we described

several possible approaches, our contention is that Maine would have to take a strong regional approach, working with other New England and mid-Atlantic states, if it wanted to have sufficient “throw weight” on some of the critical Farm Bill reauthorization provisions. In the absence of a multi-state, collaborative approach leading to an articulation of regional priorities, it seems unlikely that Maine’s particular needs will be addressed in this Farm Bill round, unfortunately. We argued that Maine might obtain more benefit from a renewed Farm Bill, and have more traction in reauthorization discussions, if it focused on one particular Title of the Farm Bill, Forestry, where the Maine Congressional delegation already has considerable power and expertise.

We also conducted a broad overview of water policy and trade rules in relation to Maine, concluding that the major areas of engagement should be in GATS negotiations—both sectoral commitments on environmental services, sewage services, etc., and on domestic regulation—as well as the investment provisions of the non-WTO trade agreements.

With respect to investment, the paper suggests three possible reform measures:

1. an interpretive note applying to current agreements;
2. a general exception for water policy measures in future agreements; and
3. a diplomatic review provision in future agreements.

In our report to the **Labor and Economic Development Subcommittee**, we focused on procurement issues. After reviewing the history and structure of the General Procurement Agreement in the WTO, and procurement chapters in other free trade agreements, we noted Maine’s particular leadership in the “sweatfree” procurement movement. We then looked at six areas of procurement that appeared relevant to Maine’s current concerns:

1. “Anti-Sweatshop”. Maine will continue to play a leadership role in this area; its use of a Code of Conduct could become a good point of discussion/negotiation with respect to provisions in a new approach to Fast Track, and more broadly the development of binding labor standards in future trade agreements.
2. Outsourcing. It was our sense that this was still an area of substantial political debate within Maine, and that at present the state did not have the clear legislative and administrative “handles” that would allow Maine to show leadership in this area. This could change, however, and in that case, this is an appropriate issue area for CTPC attention. As such, we reviewed the range of approaches other states have used to condition the outsourcing of state contract work.
3. Selective purchasing based on broad human rights considerations. We reviewed the history of the ‘Massachusetts Burma Law’ and noted that a similar concern, and set of divestment actions by states, has arisen in relation to the Sudan, and concern for Darfur. Because Maine is one of the eight states that have passed divestiture laws—laws that are being challenged in U.S. district court by the National Foreign Trade Council—it is not inconceivable that in future Maine’s law could be cited in a WTO challenge. The Maine CTPC may wish to work with Offices of Attorneys General and Treasurers in other states to develop a strategy for responding to a possible WTO complaint, but this may not be an immediate priority until a decision in the domestic court challenge is forthcoming.

4. Local food procurement—we examined some of the misperceptions regarding the ability of states, local governments and school districts to adopt “buy local” programs. The chance that such purchasing preferences would be challenged under WTO GPA or other international procurement agreements is extremely remote. Additionally, we note that the 2002 Farm Bill does provide states/towns with a mandate to adopt local food purchasing preferences.
5. Renewable energy procurement—again this is an area of important multi-state work in implementing the Regional Greenhouse Gas Initiative (RGGI), and more broadly, an area where the relation between trade rules and environmental preferences has yet to be clarified. This is again something that the Maine CTPC may wish to insert in the Fast Track debate around “environmental standards.”
6. Prescription Drug Purchasing—We suggested that the challenge to any state drug purchasing program is more likely to arise as a GATS challenge, and should therefore be addressed in that context.

Finally, for the **Health Care Subcommittee**, with colleagues at Harrison Institute we carried out a specific analysis of Dirigo Health in relation to GATS rules. Our conclusion is that “it’s complicated,” and that we would like to discuss the possible vulnerabilities of this program to a trade or preemption challenge with the in-state parties concerned.

In conclusion, the “Fast Track” and GATS debates are, in our view, the two most significant opportunities for engagement on trade issues by the CTPC in the coming year. The “Fast Track” debate encompasses many of the concerns raised in Public Hearings—from the need for binding labor standards in trade agreements to the need for reform of “investor-state” provisions in regional/bilateral agreements such as NAFTA, CAFTA, and US-Panama. It is also one of the key areas to advance a “first principles” discussion of federal-state communication on trade.

The Commission is also encouraged to devote more attention to the broader question of federal-state communication on trade. Maine has demonstrated to other states a highly successful model for democratic discussion of trade, investment, and globalization issues, and has demonstrated to USTR and by extension the entire federal government how states can, and why they should, be consulted on trade policy matters. Other states are eager to learn from your successes. Next steps would be to link more strategically with other states—through their oversight committees, through multi-state thematic working groups, and through national associations such as NCSL and NAAG. The other priority is working toward gaining Maine state representation on IGPAC, since IGPAC has also championed a set of ideas for improved communication between the federal government and the states. At the end of the day, the measure of improved federal-state consultation on trade policy is the degree to which states feel satisfied with the quality of consultation, the timeliness of information provided, and the opportunity to weigh in on the scope and shape of U.S. commitments. As has so often been the case in its history, Maine is again the bellwether state in advancing an important principle of federalism, and has again demonstrated the importance of grassroots democratic deliberation on the key issues we confront as a nation.